

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:08CR3180
)	
v.)	
)	
ROBERT E. WILLIAMS JR.,)	TENTATIVE FINDINGS ON OBJECTIONS
)	TO PRESENTENCE INVESTIGATION
Defendant.)	REPORT
)	

The defendant has objected to parts of the Presentence Investigation Report, namely, paragraphs 19, 20, 21, 22, 23, 24, 25, 28, 35 (Defendant's objection refers to paragraph 34, but I think it is intended to mean paragraph 35.), 58, 87, 102, and 103.

I conclude that an evidentiary hearing will be necessary for resolving these objections. The government has identified the persons it expects to call as witnesses and police reports if some witnesses are not available, and Nebraska State Patrol Laboratory Reports. The government expects the testimony to consume approximately 4 hours.

The defendant has also objected to paragraph 54, saying that it overstates the defendant's criminal history in that "two infraction possession of marijuana convictions would support a motion for downward departure or variance." I am uncertain about the thrust of the probation officer's response. It appears to me that the defendant is asserting that the two convictions mentioned in paragraphs 49 and 52 ("Possess Marijuana 1 Ounce or Less—1st Offense) should not receive points under the Guidelines, perhaps because according to § 1B1.9, the Sentencing Guidelines do not apply to an infraction and Application Note 1 of § 1B1.9 defines "infraction" as "any offense for which the maximum authorized term of imprisonment is not more than five days." I make no decision now, but invite counsel to make clear their bases for their positions on this objection.

IT IS ORDERED that no tentative findings are made now; an evidentiary hearing will be held at the time of the sentencing; the government is expected to complete its evidence within four hours. The defense has not requested time for submission of evidence, but if it wants to do

so, it shall file a statement no later than 5 days before the sentencing hearing of the identity of any persons expected to testify, the subject of the testimony generally, the time expected to be used in presenting the testimony, and the nature of any documentation expected to be offered.

Dated July 1, 2009.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge